February 17, 2009

OFFICE OF THE HEARING EXAMINER
CITY OF RENTON

REPORT AND DECISION

APPELLANT: Robin Miller
1814 SE 21st Place
Renton, WA 98055

Garmon Newsom II
Warren, Barber & Fontes
City Attorney
Renton, WA 98057
Representing: City of Renton
Marilyn Kamcheff
Code Compliance Inspector
Renton, WA 98057

Miller Unfit Dwelling Appeal
File No.: LUA 08-124, AAD

PUBLIC HEARING: After reviewing the Appellants' written requests for a hearing and examining available information on file, the Examiner conducted a public hearing on the subject as follows:

MINUTES

The following minutes are a summary of the December 2, 2008 hearing.
The legal record is recorded on CD.

The hearing opened on Tuesday, December 2, 2008, at 9:04 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

Parties present: Garmon Newsom II, Assistant City Attorney

Marilyn Kamcheff, Code Compliance Officer
City of Renton

Robin Miller, Appellant

The following exhibits were entered into the record:

Exhibit No. 1: Yellow file containing the original application, various reports, and letter of appeal.	**Exhibit No. 2:** Lack of Due Process packet presented by Mr. Miller
Exhibit No. 3: Amended Complaint	

Robin Miller presented a document titled "Lack of Due Process" and stated that it was the substance of his appeal. Attached to that was his copy of the Amended Complaint that preceded the first hearing.

He was not questioning whether the building in question was in need of repair or attention, rather the procedures that have been taken in this matter. He is aware that the building is in need of attention, he has been working, as he is able on the property.

The process that the City took in this case was not listed in the ordinances and specifically he believes the City violated the statute in issuing the Order on March 18. The Order was issued without any prior notice or hearing as required.

The Order issued on the 18th required that repairs to the building be completed by April 23 or the building would be demolished. That is not reasonably possible to achieve. It seemed that the City was solely seeking demolition of the building.

He believed that the Order issued on March 18 should be invalid and considered void.

These issues were brought forward in previous meetings with Code Compliance Officer, Marilyn Kamcheff. He put his questions in writing addressed to Marilyn, they discussed the issues and he asked that the City Attorney check to see if his information was correct.

The City took jurisdiction of that property on the 1st of March at the time of the annexation, within 18 days he was presented with an Order that mandated the building be completely renovated to Code or demolished within 30 days. On July 17, the City issued another Order without any prior notice or hearing, requiring the completion of repairs or demolition of the building within 30 day. State law requires a hearing before an Order can be issued.

Next, the City conducted a search of the premises that he believed was invalid and in violation of the statute. It appeared that Mr. Watts was expecting him to pay nearly $3,000.00 for police services because the City wished to conduct a search of his property and acquired a search warrant to allow them access to the property. The City did not ask Mr. Miller if he would open the building up to them for an inspection. He was not even notified that a search was taking place and he did not find out about it until he attended the hearing. The statute states that a search can only be conducted in a manner that causes the least possible inconvenience to the owner, it further requires that the request for a search warrant happen only after it has been determined that entry to the property would be denied or resisted. He was never notified about the search warrant.

He continued with his statement of the chronological sequence of events leading to the hearing today. He never saw the original complaint, but did receive an amended complaint that was issued on August 21. At the hearing he was not aware of the issues, his copy of the complaint was missing page 3 and had two copies of page 4. Page 2 does state a corrective action that must be accomplished but does not give a date for the completion. Again an Order had been issued prior to a hearing, which violates the statute.

This building exists today exactly as it did at the time of the annexation in March. The Renton code talks about authorized non-conforming structures.

The Examiner stated that this residential property is located in a residential zone, therefore it is a conforming structure. It would be permitted if it were in a fit condition, it is a single-family home in a residential area.

Mr. Miller stated that he was referring to the order to demolish the building. He is attempting to restore the home, but questions what "appropriate time" means. When does Renton's jurisdiction in respect to the code

begin. He believed it began on the first day of March and not before. What may or may not have been the case last year or five years ago seemed to be not relevant with respect to Renton code as it applies.

There was some discussion on the condition of "unfit", the Examiner stated that he had seen the pictures in the file and the house was clearly unfit for habitation. Whether the building was abandoned or not, it must be in a safe and secure condition before it can be considered a non-conforming use that may continue.

Mr. Miller stated that the building is fairly secure from entry. He further had taken steps to shore up the interior, he felt fairly safe in stating that the building would not fall down. He would not be inside working on it if he felt that it was unsafe. Discussion continued as to the unsafe and unfit condition of this property. Mr. Miller stated that the code clearly says 2 years. He continued to state that this building has been unsafe since March 1, when the City of Renton annexed the property.

The Examiner stated that this building has been unsafe under King County ruling prior to that. Did King County try abating this property in the past?

Mr. Miller stated that they had not, they never determined it was unsafe. He secured the building because the building was vacant and they were doing repairs. He has owned the building for approximately 10-15 years. There were renters in the house and one really bad renter and that is when King County code enforcement first took action on the place. He received a letter stating that he needed to clean up the garbage, the tenants were storing garbage all over the property.

The Examiner asked how soon he could get the building in physical shape, if he were able to do that?

Mr. Miller stated that it was the definition of physical shape that needs to be defined. A building that could be rented, owned or lived in by someone would take a major job.

The Examiner again asked how long it would take to make it safe and habitable, or how long it would take to demolish the existing building and rebuild a new home?

Mr. Miller stated that in his situation, meaning not having the financial or physical ability, he did not know how long it would take. He guessed it would take the better part of a year for a contractor to do the work that needs to be done.

In the Findings of the minutes (page 7 of 11) Item 5, it states that Mr. Watts found the house to be abandoned and in the state of near collapse, that is apparently what neighbors have indicated, however, the house was not abandoned. He further discussed the Conclusions from the minutes again stating the issue of the variety of statements referring to the house being abandoned vs. vacant. He also took issue with the fact that the owner must pay search warrant fees in the amount of $2,700.00, which he felt was needlessly done.

He understood the issues with the neighbors, it is unsightly. It is his intention to remedy the property. A trailer that was stored on site has been removed. He would urge the City to step back and see if there is a way to negotiate an arrangement to rehabilitate the house rather than destroy it and in doing so require him to start over at the beginning.

Upon questioning by Garmon Newsom, Mr. Miller stated that he has owned the house for 10-15 years but could not recall the year of purchase. He guessed that it was sometime in the early 1980's. He never lived in the home, he rented the home in the late 1980's to the early 1990's. No one has lived in the home since the last renter.

King County first contacted him by letter regarding the condition of the home in 2006, they contacted him because there was an automobile that had been abandoned in the back yard and there were complaints about the garbage on the property. King County did not give a time frame, only stated that the automobile had to be removed and he took care to have the car and garbage removed.

An Order to Correct was sent to him by the City of Renton on or about March 18, he made no corrections at that time. On May 8, Marilyn Kamcheff sent a letter concerning the Order to Correct and requested him to correct certain conditions. Another letter was sent on May 20, 2008 that summarized the meeting and the unfit condition that needed to be resolved. Mr. Miller stated that he was at the hearing where the Director issued the Final Order or what would be the appeal in this matter dated September 18, 2008. He did have notice of this hearing. He did have an opportunity to appear on September 11 and present his facts and important criteria.

He further stated that he has not contacted a contractor about fixing the home. At one point he received notice from the City that the door was open and he had to go close it and secure it again. It was evident that the door had been forced open. He may have extended an offer to let the City of Renton come on the property and inspect it, he did not recall.

At the time the search warrant was executed, he was not present at the home, he did not know when the search warrant was executed. At no time was any inquiry made of Mr. Miller regarding the search warrant.

A 10-minute break was taken: Hearing Resumed at 10:30 am.

Mr. Newsom stated that he would not be calling any City witnesses.

The Examiner stated that there were members of the public present wishing to testify. The fact is that this is an appeal between Mr. Miller, who has objected to the way the City has enforced the code against his property and the City defending that position. The state of the property as now evidenced by those witnesses is not necessarily relevant. This is an appeal based on a record already established by the City. The public does want to testify, but their testimony will not be persuasive or used in the way this process is going forward. The public does have the right to be heard at a public hearing, they may do so, please keep comments very limited. What is said most likely will not be used in this proceeding, the rules are structured so that Mr. Miller has challenged a decision already made by the Director and no new evidence is allowed to affect the Examiner's decision.

Stephen Perkins, 17103 125th Avenue SE, Renton, 98058 stated that he has lived in his house since 1979. The property in question has been vacant for approximately 15 years. There have only been attempts to take care of the property, the tarps on the roof are replaced once a year, the lawn gets mowed approximately twice a year. They are concerned what this property is doing to the value of their own personal property. He has seen a large tree in the backyard that went down in the storm last year and it still remains in the backyard. Kids are playing in the yard, the number of rats in the neighborhood have increased making health issues a very strong problem. Offers have been made to purchase the property, they have knocked on the door, left notes on the door with no response regarding the purchase of the property.

Gary Palmer, 17104 125th Ave SE, Renton, 98058 stated that he wanted to verify the previous speaker and note that the condition of this property only detracts from the other property owners in the neighborhood.

George Runne, 16835 125th Ave SE, Renton, 98058 stated that he is currently studying to become a licensed architect and has worked in construction for many years. With his knowledge of building, the repairs that are being done starting on the inside is basically a waster of time. The tarp on the roof has worn away and the roof currently leaks. To repair a house in this condition, it is necessary to begin with structural walls and exterior and repair the roof prior to working on the inside. It is his opinion that it would be more costly to repair than it

would be to tear it down to the foundation and begin again. It would also be faster to start new than try to remodel a structure in that condition.

In his experience it would take 6 months to build a new house. The house could be demolished in two days.

Mr. Newsom final statement:

This matter is based on prior record, the testimony of the various witnesses was offered simply as rebuttal of Mr. Miller's allegations today. The discussion about the Order, the search warrant and the Amended Complaint were out of the scope of today's hearing.

First, abandon does not seem to be the critical issue, abandon goes to show the lack of care being shown by Mr. Miller for that property. That is the problem the community has with the property. If the property was vacant but well maintained, the neighbors would most likely prefer someone living in the home, but they would be less concerned about the health and safety risk if that home was properly maintained.

Concerning jurisdiction, the ability to consider the evidence and if the evidence is long standing evidence the jurisdiction does not limit the Examiner's ability or the Director's ability to consider that information. It holds true in criminal, in regular civil matters and in administrative matter that if a party, the appellant, is making an argument that a condition is not as described, evidence of that fact is always significant and important for the person considering the evidence.

The fact that Mr. Miller had been receiving orders to correct prior to the date of the hearing demonstrate and show the extreme condition and period of neglect for this building. Mr. Newsom went on to explain the significance of Chapter 35, Declaration of Purpose. Under the discussion of the Complaint, this section explains how service is to be made and that it is proper to post on a property if the owner cannot be located. Further discussion covers the estimate of the cost of repair bears on the value of the building structure.

Section F discusses the required hearing and that appears to be where the due process comes into play. The fact that Mr. Miller received the notice of hearing and that he appeared at the hearing, that he was heard at the hearing, and that he had an opportunity to address his issues as best he understood them at the hearing. After that there was consideration of the facts, evidence and the law by the Director and then the Director made a ruling. This condition has existed for many years, not just since March of this year. If Mr. Miller had simply made a statement to the Director if he was concerned about notice or issues of timing of notices and that he needed a continuance because he was unprepared, that would have been considered and most likely granted by the Director.

There is a claim that the search warrant violated his due process rights under the claim that it was inconvenient. This appears to be a misinterpretation of what convenience is supposed to be. If he happened to reside at that location and the officers happened to go in at an inconvenient hour or day and were not sensitive to certain circumstances, there might be a basis to say that was inconvenient when they executed the search warrant. In this case, Mr. Miller does not reside at the location at the time of the search warrant, he was not inconvenienced, he was not inconvenienced by the specific time of the search warrant. The fee charged for the search warrant is not included as an inconvenience by any statute. In General Costs section of the code it does state that actual costs and expenses will be assessed, including the cost of repairs, alterations, improvements, vacating and closing, removal and demolition. Actual cost shall include the cost of staff time including overhead contracting, engineer fees and as well as other fees. This is broad enough to encompass the staff hours, not necessarily the search warrant, but the hours that staff spent in preparing the search warrant and to go in and confirm what they believe the situation to be. Communication with Mr. Miller over the search warrant is not required and based on the record, there were communications with no action being taken.

It appears that the bulk of concerns about the amended complaint are that there was no page three in Mr. Miller's copy and that there were two page four's with different dates. The intent was not to deprive Mr. Miller of the information on page three. Page three specifically talks about obtaining a demolition permit and continues the discussion on corrective action from the bottom of page two. Corrective action dates were provided on page two a couple paragraphs from the bottom. The compliance date on the Order to Correct was July 15, 2008 as shown on page two. Page three with the exception of one paragraph, discusses the fees and costs to be paid by the property owner, this is the same information that is generally available to the public on line or at the City Clerk's office. It was not the intent to hold information from Mr. Miller and the City did apologize to Mr. Miller and the Examiner. He did not believe this error to be on great magnitude. He did receive the correct dates and time of hearing.

We are left with the property in question, and the Director has had a hearing with Mr. Miller present and Mr. Miller has had an opportunity to share his concerns, complaints, deficiencies in the process and it appears that these complaints were not offered at that time. He did not believe that the Director had heard any good cause for any of the allegations asserted by Mr. Miller. The Examiner is to address any errors that may have occurred during the prior proceeding, not to simply allow the appellant or any other person a second opportunity to introduce evidence, to try again, or to try to persuade someone else. An appeal is an appeal, not a second trial. The Examiner is further directed that the Director's determination should be accorded substantial weight. Based on the presentation today, there have been no substantive errors noted by Mr. Miller of the Director's ruling.

The Examiner stated that the issues are fairly odd, Mr. Miller claims he did not receive the official copy containing page three and received two page four's each with a different date. The official Order was apparently dated 8/21/2008 and Mr. Meckling did sign. Mr. Miller did attend the hearing but did not realize the amended complaint was wrong until restudying the file. There were some errors in issuing this document to him and they were discovered after the fact.

Mr. Miller Response:

He did in fact, raise issues about due process, the statutes and codes, he did make issue of those issues at the hearing.

Information was not available to him at the hearing, it was only after the hearing that he became aware of the issue of the search warrant as well as the Amended Complaint. It seems that would be cause for allowing the introduction of that additional evidence.

The City Attorney suggests that because nothing was done in response to Orders provided to him prior to the hearings that that indicates he is unwilling to be cooperative with the City. That is not the case. The Orders are defective, when read they are mandates, they are in fact orders to comply. He was left with no choice but to do nothing, should the City decide to destroy his property.

The City Attorney suggested that he had an opportunity to request a continuance if he felt he needed more time to prepare for the Director's hearing. He did request a continuance and it was denied. There was information that he learned at the hearing for the first time. The City Attorney made the statement that the City is not required to notify Mr. Miller regarding to applying for a search warrant.

He further was concerned about the "unfit building" definition that exists in the Renton Code. It appears to be a circular argument, to say that the code is not applicable because this is an unfit building, but in order to say it is an unfit building the code determines what makes an unfit building.

Mr. Miller had no quarrel with the condition of the building, it is vacant, it has not been in this condition for that long. He understands that it must be taken care of, that is his intent. He would like to have a confirmation as to what is an unfit building as defined in the code.

Mr. Newsom read the code section defining unfit or abandoned.

The Examiner questioned the fact that this building is nothing but unfit. It is defined as a single-family residence, but it is not fit in its current state.

Mr. Miller noted that there was a mention of 90 days in the code provision and those 90 days began with the Annexation of this property to the City of Renton.

The Examiner stated that this building has been unfit or in a state of disrepair for probably 10 years or more. No attempt has been made prior to this to bring it up to a standard that would be habitable.

He noted for the record that he would consider the Director's Decision and Mr. Miller's arguments about due process in making his decision.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 11:24 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

FINDINGS:

1. The appellant, Robin D. Miller, filed an appeal of decision finding a residence an unfit building and ordering that it be demolished.

2. The appeal was filed in a timely manner.

3. The appellant owns property located at 16855 125th Avenue SE in Renton, Washington. The property is a single family home.

4. The home is located in the City of Renton. The property was annexed to the City in March 2008. Prior to annexation the property was under the jurisdiction of King County.

5. The appellant was unable to provide evidence when he purchased the property. The appellant has owned the property for a considerable period of 15 years more or less according to the record.

6. The appellant has agreed that the home is in a state of serious disrepair. The appellant has indicated he can understand neighbors' angst and anger over the home's state.

7. The main or actual only thrust of the appellant's appeal arguments are due process or procedural arguments. The appellant argues the his due process rights were adversely affected by the issuance of an Order without a prior hearing based on state statute and were also affected by the application of City ordinances to his property too soon after the annexation. He also argues that the search warrant was obtained improperly since access was not denied. The appellant alleges that he objected to these issues in the forum where the Director held a public hearing. The appellant did not cite evidence nor provide any pointers to those objections.

8. Section 1.3.4 provides the definitions of "unfit or abandoned structure":

> "(22) Unfit or Abandoned Structure: Any structure, which has been damaged by fire, weather, earth movement, or other causes, and which is not fit for occupancy, and has been abandoned or unoccupied by lawful tenants for a period of 90 days; or where the cost of repair exceeds the value of the structure once repaired; or such a damaged structure whose owner shows no intention of completing or making substantial progress on completing such repairs within 90 days.
>
> Included within this definition shall be any dwellings which are unfit for human habitation, and buildings, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, overcrowding, or due to other conditions which are inimical to the health and welfare of the residents of the City of Renton. (Ord. 5221, 9-11-2006)"

9. The appellant also alleged that he was entitled to restore this structure under the terms of the City's "non-conforming structures" provision. Those provisions apply when a structure is non-conforming as to zone or use and also when the structure was not vacant for 2 or more years and/or when the structure was damaged by fire or act of God. Neither of those exceptions applies in this case. The record does not show fire or act of God but that the building was left to deteriorate over a period of years. The record below also established the costs of repair as exceeding the statutory values.

10. The appellant alleges errors in the notification he received. He alleges that an "Amended Complaint for Unfit Dwellings, Buildings and Structures" dated August 21, 2008 that he received was missing Page 3 and had two copies of Page 4 and that those two copies of Page 4 were different from each other. The document he presented showed the two Page 4's differing in the signing date and time. One showed a date of "8/21/08" while the other showed "8/13/08." Mr. Meckling's name was also misspelled in the signature block but was signed by Mr. Meckling. The document did provide notice of the hearing time, date and location. The appellant testified that he did not notice these irregularities until he was preparing for this appeal hearing. The appellant also noted that the minutes of the Director's Decision omitted his name as an attendee of the hearing. Those minutes show his actual attendance in the body of the minutes where he was an active participant and presented evidence in his behalf.

11. The "non-conforming provisions of Renton's code are provided for reference:

> 4-10-050 NONCONFORMING STRUCTURES:
>
> A NONCONFORMING STRUCTURES - GENERAL:
> Any legally established building or structure may remain, although such structure does not conform with the provisions of the Renton Municipal Code, provided the following conditions are met:
>
> 1. Not Vacant or Left Abandoned: The nonconforming buildings or structures do not have historic significance, and have not been vacant for two (2) or more years, or have not been abandoned.
> 2. Unsafe Structures: The structure is kept in a safe and secure condition.

3. Alterations: A legal nonconforming structure shall not be altered beyond the limitations specified below:
a. Structures with Rebuild Approval Permits: Alteration work exceeding an aggregate cost of one hundred percent (100%) of the value of the building or structure shall be allowed if: (1) the building or structure is made conforming by the alterations; or (2) the alterations were imposed as a condition of granting a rebuild approval permit; or (3) alterations are necessary to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority. Alterations shall not result in or increase any nonconforming conditions unless they were specifically imposed as a condition of granting a rebuild approval permit, pursuant to RMC 4-9-120.
b. Other Legal Nonconforming Structures: The cost of the alterations shall not exceed an aggregate cost of fifty percent (50%) of the value of the building or structure, based upon its most recent assessment or appraisal, unless the amount over fifty percent (50%) is used to make the building or structure more conforming, or is used to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority. Alterations shall not result in or increase any nonconforming condition.

5. Restoration: Nothing in this Chapter shall prevent the reconstruction, repairing, rebuilding and continued use of any nonconforming building or structure to its same size, location, and height when damaged by fire, explosion, or act of God, subsequent to the date of these regulations and subject to the following conditions:
a. Legal Nonconforming Structures with Rebuild Approval Permits: Restoration or reconstruction work exceeding one hundred percent (100%) of the latest appraised value of the building or structure closest to the time such damage occurred shall be allowed if it is: (1) a condition of granting the rebuild approval permit pursuant to RMC 4-9-120; and/or (2) necessary to allow the structure to be rebuilt to its condition prior to the damage considering construction costs; and/or (3) required to strengthen or restore to a safe condition any portion of a building or structure declared unsafe by a proper authority; and/or (4) necessary to conform to the regulations and uses specified in this Title.
b. Other Legal Nonconforming Structures: The work shall not exceed fifty percent (50%) of the latest assessed or appraised value of the building or structure at the time such damage occurred, unless required to strengthen or restore to a safe condition any portion of a building or structure declared unsafe by a proper authority otherwise any restoration or reconstruction shall conform to the regulations and uses specified in this Title.
c. Single Family Dwellings: Any legally established single family dwelling damaged by fire or an act of God may be rebuilt to its same size, location, and height on the same site, subject to all relevant fire and life safety codes. Restoration improvements shall commence within two years of the damage, and shall continue in conformance with approved building or construction

permits, otherwise the structure shall lose its restoration authorization and status.

12. RCW 35.80.030 states:

"Permissible ordinances -- Appeal.

(1) Whenever the local governing body of a municipality finds that one or more conditions of the character described in RCW 35.80.010 exist within its territorial limits, that governing body may adopt ordinances relating to such dwellings, buildings, structures, or premises. Such ordinances may provide (emphasis supplied) for the following:"

13. While members of the public were permitted to speak at this hearing, their testimony was not used in reaching this decision, as it was a closed record hearing.

CONCLUSIONS:

1. The appellant has the burden of demonstrating that the decision of the City Official was either in error, or was otherwise contrary to law or constitutional provisions, or was arbitrary and capricious (Section 4-8-110(E)(7)(b). The appellant has failed to demonstrate that the action of the City should be reversed. The appeal is denied.

2. Arbitrary and capricious action has been defined as willful and unreasoning action in disregard of the facts and circumstances. A decision, when exercised honestly and upon due consideration of the facts and circumstances, is not arbitrary or capricious (Northern Pacific Transport Co. v Washington Utilities and Transportation Commission, 69 Wn. 2d 472, 478 (1966).

3. An action is likewise clearly erroneous when, although there is evidence to support it, the reviewing body, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. (Ancheta v Daly, 77 Wn. 2d 255, 259 (1969). An appellant body should not necessarily substitute its judgment for the underlying agency with expertise in a matter unless appropriate.

4. The record clearly shows that the residence is very badly deteriorated. The roof and floor have holes in them. Supporting members are rotting and interior walls are also rotting. Old pipes and wiring are exposed and the building presents a hazard to those who would enter it. This building has been in this state for much longer than 90 days. The building is "unfit" by definition and that is what the Director found. That definition does not lend itself to semantic questions of which jurisdiction the residence was in or is in, county or city. It clearly has been in a serious state of disrepair for longer than 90 days. The photographs and descriptions show a building that could not have reached this level of deterioration in a short period of time. The appellant guestimated it has been without inhabitants for more than 10 years.

5. The appellant argues that he was denied due process since an order issued prior to a hearing in contravention of RCW 35.80. The language of the state statute is permissive and not mandatory. "(1) Whenever the local governing body of a municipality finds that one or more conditions of the character described in RCW 35.80.010 exist within its territorial limits, that governing body may adopt ordinances relating to such dwellings, buildings, structures, or premises. Such ordinances may provide (emphasis supplied) for the following: "The language of the statute uses the phrase "may provide." That means the language is suggestive or advisory.

6. This office acknowledges that some errors occurred along the way in dealing with this matter. While the original notice in March might have taken the form of an "order", form does not supplant substance. It clearly described the problems with his property and its state of disrepair. The appellant may have received a bad or incomplete copy of the Amended Complaint but even the appellant admitted that he made the discovery when preparing for this hearing and not at that time. If the appellant did receive incomplete or erroneous documents they did not prejudice his opportunity to be heard and present evidence. The omission of the appellant as an attendee of the hearing when he was clearly there is not a critical error. Those same minutes reflect he was at the hearing and participated. The appellant was provided with an opportunity to contest the March findings and do so in a hearing. The appellant availed himself of that right to a hearing and appeared. The appellant was afforded appropriate due process.

7. This office has no jurisdiction to review the action of the Municipal Court in a criminal action. The Hearing Examiner's review is entirely a civil review and cannot second-guess the issuance of a search warrant.

8. With those procedural issues dispensed with, there is the merit of the Director's Decision. The decision is clearly correct. This single-family residence is unfit and the appellant admitted as much at the appeal hearing while possibly using different phrasing. Experts provided evidence that it was in such a state of disrepair that costs of repair exceed the statutory limits.

9. The appellant was given a full opportunity to refute the City's allegations about the nature of the residence. The Director found the residence "unfit" after appropriate deliberation.

10. The decision below should not be reversed without a clear showing that the decision is clearly erroneous or arbitrary and capricious. This office has found that the decision below was clearly supported by the facts and the decision below should not be reversed or modified.

DECISION:

The decision is affirmed and the appeal is denied.

ORDERED THIS 17th day of February 2009.

FRED J. KAUFMAN
HEARING EXAMINER

Pursuant to Title IV, Chapter 8, Section 100Gof the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., March 3, 2009**. Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

Owner has the right to petition the superior court of King County for appropriate relief within 30 days after the order becomes final.

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.